

# Decision Notice

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**Decision 044/2016: Mr Y and Highland Health Board**

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## **Audit trail of a complaint**

Reference No: 201501301

Decision Date: 29 February 2016



Scottish Information  
Commissioner

## Summary

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On 10 and 11 March 2016, Mr Y asked Highland Health Board (NHS Highland) for the audit trail of his complaints regarding care of his brother.

NHS Highland provided Mr Y with information. Mr Y did not accept that the information disclosed to him was the information he had requested. After a review, he remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that NHS Highland had properly responded to Mr Y's request for information, in accordance with Part 1 of FOISA.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement);

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 10 and 11 March 2014, Mr Y made the same request for information to NHS Highland. The request read as follows:  
  
"Request for Audit Trail of my complaint made on 16 March 2011 to [Complaints Officer 1] regarding the care and treatment of my brother [name and DOB supplied] and follow-up complaint on 24 March 2011 made to [Complaints Officer 2]"
2. On 25 March 2014, NHS Highland responded to the information request, referring to information previously sent to Mr Y and submitting that, with the information enclosed with that letter, this represented all the relevant information NHS Grampian held.
3. On 9 May 2014, Mr Y wrote to NHS Highland requiring a review of its decision. He did not receive a response to his requirement for review.
4. Mr Y applied to the Commissioner on 14 October 2014, seeking a decision in respect of NHS Highland's failure to respond.
5. The Commissioner's Decision [Reference] required NHS Highland to conduct a review and it did so. NHS Highland issued its review outcome on 19 January 2015, upholding its previous decision that it had provided Mr Y with all the relevant information it held.
6. On 15 July 2015, Mr Y wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Y stated he was dissatisfied with the outcome of NHS Highland's review because he did not believe the information disclosed to him addressed his request fully. He explained what he wanted investigated: the Commissioner can only investigate what NHS Highland held by way of an audit trail and cannot take steps to establish an audit trail where none existed.

## Investigation

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7. The application was accepted as valid. The Commissioner confirmed that Mr Y made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
8. On 11 August 2015, NHS Highland was notified in writing that Mr Y had made a valid application. The case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. NHS Highland was invited to comment on this application and answer specific questions, with particular reference to the steps taken to identify and locate any relevant information it held.

## **Commissioner's analysis and findings**

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10. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Y and NHS Highland. She is satisfied that no matter of relevance has been overlooked.

### **Section 17 - Notice that information is not held**

11. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to qualifications which are not applicable in this case.
12. NHS Highland described the sets of records it had considered in responding to Mr Y's request, including those relating specifically to Mr Y's complaint. It identified the staff asked to search for information in connection with the request, describing their respective roles. It also provided some background information in relation to the complaint and its timing.
13. NHS Highland also explained that it uses the national NHS Mail system, which has built-in retention processes. It supplied a copy of the current policy. NHS Highland confirmed it held no further information regarding the audit trail and that it had now given Mr Y everything relevant it held.
14. The standard of proof to be applied in determining whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining whether a Scottish public authority holds information, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. She will also consider, where appropriate, any reason offered by the public authority to explain why it does not hold the information (or why searches have not been considered necessary in the circumstance), along with any relevant submissions received from the applicant.
15. In this case, the Commissioner has considered the terms of Mr Y's request, the information which the NHS Highland disclosed, and all of the relevant submissions. The request is for an audit trail specific to Mr Y's complaint: it would be reasonable to interpret that as including any records relating to NHS Highland's handling of the complaint itself, but not clinical or other records relating to its contact with Mr Y's brother.
16. Mr Y clearly expects there to be more by way of records of his contact with NHS Highland, recorded in a particular way. The Commissioner has no locus to determine what an authority ought to record, or how: she is concerned with what information the authority actually holds. Neither does it fall within her remit, as Mr Y has suggested, to interview NHS Highland staff, with a view to establishing what was done in response to Mr Y's complaint or in relation to his

brother's care. These are undoubtedly matters of significant concern to Mr Y, but they are not matters on which the Commissioner can comment further.

17. In all the circumstances, the Commissioner is satisfied that the searches and other enquiries undertaken by NHS Highland were adequate in the circumstances, bearing in mind the scope of the request and having considered all other relevant submissions. In the circumstances, the Commissioner accepts that NHS Highland has provided Mr Y with the relevant information it held at the time of receiving his request.

## Decision

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The Commissioner finds that Highland Health Board complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Y.

## Appeal

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Should either Mr Y or Highland Health Board wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

**Margaret Keyse**  
**Head of Enforcement**

**29 February 2016**

### Freedom of Information (Scotland) Act 2002

#### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

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- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

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**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**